DIRECT INVESTIGATION REPORT

HOUSING DEPARTMENT'S HANDLING OF COMPLAINTS INVOLVING CLAIMS

August 2009

Office of The Ombudsman

Hong Kong

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EXECUTIVE SUMMARY

Direct Investigation
Housing Department's Handling of Complaints Involving Claims

Background

Where complaints involve a claim for damages, the Housing Department ("HD") is often found just to leave the claim with the loss adjuster of its insurer, without itself examining the incident to identify the cause or to consider the need for service or management improvement.

2. This practice does not accord with HD's declared procedures and leaves the root causes of complaints to continue unchecked. Against this background, The Ombudsman initiated a direct investigation to examine:

(a) HD's ways of handling complaints which involve claims; and
(b) HD's mechanism for monitoring inquiries by the loss adjuster.

Procedures for Handling Complaints

3. **General Procedures.** HD's Departmental General Circular No. 1/2009 lays down a clear timeframe for acknowledging and investigating complaints and updating and replying to complainants. It also specifies the details of replies to complainants and the need for follow-up action to rectify problems and prevent recurrence.

4. **Complaints Involving Claims against HD.** HD should process the complaint in accordance with the above procedures and refer the claim to the loss adjuster for processing under HD's public liability insurance policy. The loss adjuster will liaise with the claimant direct. HD is to monitor the loss adjuster's handling of claims against prescribed procedures and service standards, including a timeframe for acknowledging receipt of claims, updating on progress, replying to claimants and making offers for settlement.

5. **Complaints Involving Claims against HD's Contractors.** HD should process the complaint in accordance with the procedures and refer the claim to the contractor, who will in turn refer it to the loss adjuster of the contractor's insurer[1]. Meanwhile, HD frontline officers have

[1] *This arrangement is being replaced by an umbrella insurance policy that will centralise the processing of claims against contractors under HD monitoring.*

instructions to urge contractors proactively to settle tenants' claims. However, there are no set procedures for monitoring these cases. Contractors are required to report progress and the eventual outcome, but as HD frontline officers generally adopt a passive approach, HD's records of such cases are incomplete.

Case Studies

6. Case studies (**Chapter 3** of the Report) illustrate HD's deficiencies in handling complaints which involve claims.

Observations and Opinions

Complaints Involving Claims against HD

7. HD professes a commitment to effective complaints handling. The case studies, however, show that in practice, some complaints do not get proper processing by HD simply because they include a claim for damages. All such claims seem to trigger automatic referral to the loss adjuster, to the total exclusion of any further attention from HD.

8. Despite clearly prescribed procedures for handling complaints involving claims, HD does not always follow them. In some of the cases studied, HD had failed to issue acknowledgement and interim and substantive replies. It had also failed to identify problems for follow-up action or rectification.

9. It was inappropriate and inadequate of HD to have overlooked, or ignored, its own procedures and to rely on the loss adjuster's investigation. The loss adjuster investigates and adjusts claims only with reference to the insurance policy. Issues such as the need for service or management improvement are outside the scope of the insurance policy and HD must take them up itself by conducting its own parallel investigation to get at the root cause(s) of complaints.

10. The insurance is meant to mitigate HD's financial burden in case it has to pay compensation. It does not absolve HD of its responsibilities as it has ultimate responsibility for the proper handling of claims. However, in some of the cases studied, the loss adjuster had failed to issue timely acknowledgement and interim replies to claimants. Evidently, HD had not monitored those cases properly.

Complaints Involving Claims against HD's Contractors

11. Not subject to any service standards, cases against HD's contractors are loosely monitored by HD. Consequently, records are incomplete, with some cases having no records at all.

12. HD's established practice to "urge" contractors for conciliatory settlement of claims contrasts markedly with its strict detachment from the loss adjuster's processing of claims against HD itself. It should maintain a similar approach in monitoring claims both against itself and against contractors.

Assistance to Claimants

13. In some of the cases studied, HD blindly followed the loss adjuster's advice and refused to give the claimants reasonable help. In our view, HD should not only supply all relevant information to enable the loss adjuster to arrive at a well-grounded conclusion, but should also accommodate claimants' requests for information and assistance as far as possible. It should judiciously assess the loss adjuster's advice on claims, which is inevitably restricted to HD's liability covered by the insurance policy.

Recommendations

14. In handling complaints involving claims, HD often overlooks the need to examine the root causes of problems. In this connection, The Ombudsman has made 11 recommendations to HD, including:

Processing of Complaints

(a) remind staff regularly to follow its prescribed procedures for handling complaints that involve claims;

(b) remind staff of the need for parallel investigation of complaints other than the claims involved, to get at the root cause(s) and to improve as appropriate;

Handling of Claims by Loss Adjuster

(c) review and step up monitoring of claims handling by the loss adjuster;

Handling of Claims by Contractors

(d) devise a consistent approach for monitoring claims handling by the loss adjuster and contractors;

Keeping of Records

(e) require contractors to furnish progress reports on claims;

(f) require staff to keep records of cases against contractors; and

Assistance to Claimants

(g) provide information or other forms of assistance to claimants in need.

Office of The Ombudsman
August 2009

1

INTRODUCTION

BACKGROUND

1.1 In Hong Kong, some 1.8 million people live in 154 public housing rental estates under the Hong Kong Housing Authority. Its executive arm, the Housing Department ("HD"), is responsible for managing and maintaining such estates.

1.2 Every now and then, public rental housing tenants complain to HD about its action and lodge claims for injuries or property damage. Some of the tenants, dissatisfied with HD's handling, complain to this Office.

1.3 We note from a number of such cases that where a tenant's complaint includes a claim for damages, HD often adopts a detached approach, i.e. just leaving the claim with the loss adjuster of its insurer, without itself examining the incident to identify the cause or to consider the need for service or management improvement.

1.4 Inquiries by the loss adjuster aim at addressing only the claims for compensation or damages, not management and service issues in HD's operations or supervision of its contractors. They certainly would not get to the root of such problems. Unless HD conducts its own investigations and takes corrective measures, the root causes of complaints would continue unchecked.

1.5 Only serious cases such as those involving deaths or grave injuries may justify HD's adoption of such a detached approach. In those cases, the claimants are prospective litigants and may, therefore, use any detailed reply from HD to bypass the court's "discovery" process. However, such cases are rare.

1.6 HD has guidelines for staff which suggest that it should itself address all issues raised in a complaint while leaving only the claim with the loss adjuster. This, however, does not accord with HD's practice in some cases we have investigated (**para. 1.3**). Against this background, on 5 October 2008, The Ombudsman initiated a direct investigation into the matter under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397.

PURPOSE AND AMBIT

1.7 This direct investigation examines:

(a) HD's ways of handling complaints which involve claims for damages; and

(b) HD's mechanism for monitoring inquiries by the loss adjuster.

METHODOLOGY

1.8 We have studied HD statistics and case files. We have also met HD representatives.

1.9 We invited members of the public to give comments and suggestions. We have received two responses.

INVESTIGATION REPORT

1.10 We sent a draft investigation report to the Director of Housing for comments on 8 May 2009. A meeting to discuss the draft report took place on 22 May 2009. We have considered and duly incorporated his comments. This final report was issued on 24 August 2009.

2

HANDLING OF COMPLAINTS

2.1 Complaints from tenants are handled by the HD estate management offices. To ensure consistent and prompt action, HD has set out procedures in Departmental General Circular No. 1/2009, *Procedures in Handling Public Complaints*. A relevant extract is at **Annex I.**

PROCESSING OF COMPLAINTS

2.2 The key steps to be taken by the estate management office on receipt of a complaint are:

Procedures		Timeframe
(a)	Acknowledge	Within ten days
(b)	Investigate	Immediately
(c)	Reply or, if substantive reply is not yet ready, inform complainant in writing of proposed action, timeframe and where appropriate, reason for delay	Within 21 days of receiving complaint
(d)	Continue to issue interim replies pending substantive reply	Monthly

Reply to Complainant

2.3 Upon completion of an investigation, HD is to reply to the complainant with the following details:

- circumstances giving rise to the complaint
- investigation conducted and the outcome *vis-à-vis* established policies, operational guidelines and approved procedures
- reasons for HD's final decision
- action taken or to be taken
- improvement measures with timeframe for implementation
- apologies where warranted
- name and telephone number of case officer
- review channels

Follow-up/Problem Rectification

2.4 HD is to examine each case to identify the need for measures to prevent recurrence and to improve the quality of service. For example, if it is a case of flooding caused by a faulty drainage device, HD should seek measures to upgrade the system.

COMPLAINTS INVOLVING CLAIMS

2.5 When lodging complaints with HD, some complainants also submit claims for damages.

Public Liability Insurance

2.6 The Hong Kong Housing Authority has taken out public liability insurance ("PLI") to cover injuries or property damage caused by HD's negligence. Under the insurance arrangement[1], HD should process the complaint in accordance with the procedures stipulated in Departmental General Circular No. 1/2009 (**paras. 2.1 – 2.4**). As regards the claim, HD would, in line with market practice, refer it to the loss adjuster of its insurer for processing under the PLI policy. The loss adjuster will then take up the claim and liaise with the claimant direct.

[1] *Financial Instruction No. 9 of 2008/09.*

Handling by Loss Adjuster

2.7 The loss adjuster is appointed by the insurer to investigate and adjust claims on its behalf. Its role is to establish whether HD has been negligent and if so, the quantum of the damages that HD/the insurer is liable to pay. The loss adjuster is responsible for: responding to the claimant; investigating and assessing the claim; and negotiating settlement with the claimant. HD will supply the loss adjuster with relevant information and monitor its processing but will otherwise remain inactive[2].

2.8 HD requires the loss adjuster to handle claims according to the procedures and service standards at **Annex II**. The key steps are:

Procedures	Timeframe
(a) Conduct initial inquiry	Within five working days of being notified by HD of potential claim
(b) Issue acknowledgement letter to claimant	Within five working days of receiving actual claim referred by HD
(c) Advise claimant on progress	Once every three months
(d) Reply to claimant if claim is unsuccessful	Within five working days of completing investigation
(e) If claim is successful, make offer for settlement to claimant upon obtaining approval from HD or the insurer	Within five working days of receiving approval

Handling by Contractors

2.9 Where a claim is against its contractor, HD will refer the claim to the contractor. HD itself would look into any management and service problems involved in the complaint. HD contractors are insured according to HD contractual specifications and any claim will, therefore, be handled by the loss adjusters of the

[2] *The public liability insurance policy provides that "HA shall not negotiate, pay, settle, admit or repudiate any claim without the written consent of the insurer or its appointed loss adjuster."*

contractors' insurers. Unlike the loss adjuster of HD's insurer, however, these loss adjusters are not subject to any specified service standards. Contractors are only required to report to HD on progress and the eventual outcome.

2.10 This insurance arrangement is undergoing changes. Since 2007, HD has been phasing in an umbrella insurance arrangement to cover its works contracts not exceeding $500,000 and property management contracts by 2010. Taken out by HD itself, the new insurance policy will centralise the processing of claims against these contractors under HD monitoring. Accordingly, HD has been gradually renewing eligible contracts under new terms to put them under the umbrella policy. Contractors who have changed over to the new arrangement now have HD handling claims against them, while those not yet converted continue to handle claims themselves under the old approach (**para. 2.9**).

HD Monitoring and Record Keeping

2.11 HD's Public Liability Insurance Claims Review Sub-group[3] reviews quarterly the overall handling of claims by the loss adjuster of its insurer. Monthly progress reports are produced for review by HD managers at the headquarters while individual cases are monitored day-to-day by frontline subject officers at estate management offices.

2.12 HD requires frontline officers also to monitor the processing of claims by contractors. The officers have written instructions to urge contractors proactively to settle claims from public housing tenants. In fact, contractors' performance in handling claims is one of HD's criteria for assessing contractors' overall performance. Other factors include customer satisfaction survey ratings, performance indicators, complaints received and quality of remedial/follow-up action. However, as no monitoring procedures have been set (**para. 2.9**), the frontline officers generally adopt a passive approach and do not chase contractors for reports. Consequently, records are incomplete.

Replying to Claimants

2.13 There is no specified format for replying to claimants by the loss adjuster or by contractors. HD leaves this to their judgment based on market practice, though it asks for copies of their replies for monitoring.

[3] *Chaired by an HD Chief Manager, the Sub-group comprises representatives from HD's regional offices and Finance Sub-Division, HD's insurance adviser, HD's insurer and its loss adjuster.*

3

CASE STUDIES

COMPLAINTS AND CLAIMS HANDLED

3.1 In 2007/08, HD received over 2,800 complaints, among which 360 involved claims handled by its insurer's loss adjuster. As regards claims against HD contractors, HD does not systematically keep records and, therefore, has no statistical figures on their number or outcome (**para. 2.12**).

3.2 Claims mainly concern property damage or injuries sustained in accidents: from uneven or slippery floor; falling object; defective escalator or elevator; leakage, bursting or choking of duct, pipe and tank; and water seepage.

CASE STUDIES

3.3 The following case studies illustrate that while the existing procedures (**Chapter 2**) appear comprehensive and sound, HD often fails to follow them and sometimes even ignores complainants' concerns and needs altogether.

Case 1

3.4 In May 2004, a tenant complained to HD, alleging that the Department's routine cleaning of water tank had resulted in blockage of her electrical water heater. Two workmen from HD's cleansing contractor cleaned her tap filter, but the water supply was still slow and sand-choked. Despite her continued complaint, HD estate management office took no further action. Finally, she replaced the water heater and claimed that her plumber had located further blockage with sand and debris in her shower mixer.

3.5 On 30 June 2004, her son complained to the then Permanent Secretary for Housing, Planning and Lands (Housing) with the following comments or queries:

(a) the way the water tank had been cleaned in May;

(b) the lack of follow-up action on her complaint by HD estate management office;

(c) the level of competence of the workmen from the cleansing contractor who had not been able to locate the source of blockage;

(d) the danger of explosion due to blockage of the water heater; and

(e) the unfairness to his family having to pay for a new water heater.

He attached an invoice of $1,840 for the new water heater, asking for compensation.

3.6 HD headquarters acknowledged receipt of the complaint on 5 July 2004 and referred it to the relevant estate management office on 7 July 2004, with instructions to process it according to the departmental complaints handling procedures (**para. 2.1 and Annex I**). The estate management office wrote to tell the complainant on 13 July 2004 that it was following up the complaint. It handed the case over to the loss adjuster. The loss adjuster sent a written acknowledgement to the complainant on 26 July 2004. On 31 August 2004, the estate management office informed the complainant in writing that the loss adjuster was investigating the case.

3.7 On 14 September 2004, the loss adjuster replied to the complainant, rejecting his claim for damages on the grounds that:

- HD had not received similar complaints from other tenants after the cleaning;
- the old water heater was not available for checking; and
- HD's contractor which cleaned the water tank, rather than HD itself, should be responsible for any improper work.

3.8 On 22 September 2004, the estate management office wrote to the complainant that as he had been informed of the outcome of the claim, the case should be concluded. No reference was made to the other issues raised **(para. 3.5)**. A Legislative Councillor took up the case with HD in early November. Eventually, through HD mediation, the contractor responsible for cleaning the water tank made a "goodwill" payment of $3,150 to the complainant on 30 November 2004 to settle the claim.

3.9 Responding to our inquiry, HD said that there was no evidence that the cleaning of the water tank had caused the blockage.

3.10 Deficiencies noted:

- *HD had not addressed the complainant's concerns – namely the cleansing contractor's poor workmanship and level of competence, the estate management's inaction and the risk of explosion of the water heater **(para. 3.5)** – in accordance with the procedures **(para. 2.3)**.*

- *The loss adjuster had failed to issue an acknowledgement to the complainant within five working days **(para. 3.6)*** as prescribed by the procedures ***(para. 2.8(b))**.*

Case 2

3.11 On 13 June 2005, a tenant complained to HD about concrete spalling at his toilet ceiling having injured him. The next day, HD referred the complaint to the loss adjuster and informed the complainant. The loss adjuster conducted a site inspection and issued an acknowledgement letter to the complainant on 13 July 2005, but did not contact him for the following eight months.

3.12 In late March 2006, the complainant enquired of HD about progress. HD asked the loss adjuster to respond to him direct. The loss adjuster issued an interim reply to him on 6 April 2006 and updated HD on 10 April 2006.

3.13 In June 2006, the complainant asked the loss adjuster for progress. The latter issued another interim reply on 5 July 2006. In September 2006, the complainant enquired of HD again. HD asked the loss adjuster to follow up.

Satisfied that liability had been established, the loss adjuster wrote to the complainant on 18 October 2006 to ascertain the amount of claim and requested supporting documents, which the complainant provided.

3.14 On 2 February 2007, the loss adjuster made an offer of $20,000 in compensation, which the complainant accepted. On 29 April 2007, the claim was settled.

3.15 Deficiencies noted:

- *HD had not given the complainant any substantive or interim reply in accordance with the procedures* ***(paras. 2.2 – 2.3)****.*
- *HD had not actively monitored the loss adjuster's action. After referring the case to the loss adjuster in June 2005, HD did not enquire of the loss adjuster about progress until chased by the complainant months later* ***(paras. 3.12 – 3.13)****.*
- *The loss adjuster had neither issued an acknowledgement to the complainant within five working days* ***(para. 3.11)*** *nor advised him on progress once every three months* ***(para. 3.11)*** *as prescribed by the procedures* ***(para. 2.8(b) and (c))****.*

Case 3

3.16 On 19 March 2008, a tenant complained to HD about seepage from an unoccupied flat above. HD carried out repair works and stopped the seepage. Subsequently, the complainant claimed damages and HD passed the case to the loss adjuster on 13 May 2008.

3.17 After inspecting the site and acknowledging receipt of the claim on 22 May 2008, the loss adjuster collected information from HD, which claimed that water had overflowed from the cistern of the toilet, but there was no leakage from the flush water pipe which HD was responsible for maintaining. On 8 August 2008, the loss adjuster sent the complainant an interim reply.

3.18 On 30 October 2008, the loss adjuster rejected the claim on the grounds that the sudden failure of the cistern could not have been foreseen and there had been no prior case or complaint of a similar nature.

3.19 The complainant contested and queried if HD had conducted regular inspection of the unoccupied flat. The loss adjuster further enquired of HD and learned that the Department normally inspected unoccupied flats on a need basis and had not checked the flat in question since 2003.

3.20 On 2 January 2009, the loss adjuster advised HD that in the circumstances, HD was likely to lose if the complainant took the case to the Small Claims Tribunal. The loss adjuster, therefore, advocated compensation. With HD's agreement, the claim was settled in March.

3.21 Deficiencies noted:

- *HD had failed to issue the complainant any acknowledgement or substantive or interim reply in accordance with the procedures **(paras. 2.2 – 2.3)**.*

- *The loss adjuster had failed to issue the complainant an acknowledgement within five working days **(paras. 3.16 – 3.17)** as prescribed by the procedures **(para. 2.8(b))**.*

- *Until alerted by the complainant, neither HD nor the loss adjuster had ever considered the question of whether HD had conducted regular inspection on the unoccupied flat above **(para. 3.19)**, which had such an important bearing on HD's liability. This reflects a lack of thorough investigation on HD's part.*

Case 4

3.22 On 1 January 2006, a boy sustained injuries from slipping on the wet floor of a lift. His father complained to HD on 14 January 2006 about the negligence of HD's cleaners and poor monitoring by HD. He claimed compensation of $3,500. Without acknowledging receipt, HD passed it to the loss adjuster. After a site inspection, the loss adjuster acknowledged receipt on 3 February 2006.

3.23 On 21 June 2006, the loss adjuster wrote to reject the complainant's claim. It suggested that he follow up the matter with HD's management contractor and the latter's cleansing contractor.

3.24 On 14 July 2006, the complainant wrote to HD to take exception to the loss adjuster's handling of his case. He alleged that the loss adjuster had not made any contact with him throughout the six months before it replied. It had also disregarded the surveillance camera recording which showed that the cleaners had left the lift floor wet after collecting garbage.

3.25 On 19 July 2006, the HD frontline manager passed the complaint back to the loss adjuster for review, without expressing any concern over the loss adjuster's non-compliance with service standards (**para. 2.8 and Annex II**) or reminding it of the need for compliance. He informed the complainant of his action on the same day.

3.26 In its reply of 24 August 2006, the loss adjuster contended that it had called the complainant's wife on 16 June 2006, just five days before its last reply was issued. It reaffirmed its view and reiterated its suggestion that the complainant follow up with the cleansing contractor.

3.27 On 18 September 2006, the complainant wrote to HD again to pursue his claim. HD passed the letter to the cleansing contractor *via* its management contractor. Finally, on 29 January 2007, the complainant accepted payment of $3,672 from the cleansing contractor in settlement of his claim.

3.28 Deficiencies noted:

- *HD had failed to issue the complainant any acknowledgement or substantive or interim reply in accordance with the procedures (**paras. 2.2 – 2.3**).*

- *The loss adjuster had neither issued the complainant an acknowledgement within five working days (**para. 3.22**) nor advised him on progress once every three months (**para. 3.24**) as prescribed by the procedures (**para. 2.8(b) and (c)**).*

- *HD had not followed up with the contractor to prevent recurrence of similar incidents – another case of non-compliance with the procedures* ***(para. 2.4)****.*

Case 5

3.29 On 16 November 2006, a flush water pipe, which had been checked the day before under an HD maintenance scheme, burst and flooded a flat. The tenant complained to HD on 21 November 2006 and sought compensation.

3.30 Without acknowledging receipt, HD referred the case to the loss adjuster. However, there was no follow-up action. In late April 2007, the complainant checked for progress with HD's frontline office, which then issued a reminder to the loss adjuster. In early May, the loss adjuster commenced investigation and wrote to inform the complainant of its action. In July 2007, it rejected the claim and suggested that the complainant pursue the case with the contractor responsible for maintaining the pipe.

3.31 The complainant did so in October 2007, but his claim was rejected by the loss adjuster of the contractor's insurer the following month. In February 2008, the complainant asked HD to provide documents for his case against the contractor at the Small Claims Tribunal. HD provided the documents in March but did not follow up further. It was later learnt that the complainant received a compensation of about $7,000.

3.32 Deficiencies noted:

- *HD had failed to issue the complainant any acknowledgement or substantive or interim reply in accordance with the procedures* ***(paras. 2.2 – 2.3)****.*
- *HD had not monitored the loss adjuster's action* ***(para. 3.30)****.*
- *HD had not monitored the outcome of the complainant's action to seek compensation from the contractor through the Small Claims Tribunal* ***(para. 3.31)****.*

Case 6

3.33 On 4 January 2008, a tenant was injured after tripping over a wooden plank outside her building. She complained to HD with a claim for damages on 12 February 2008. HD informed her the following day that her claim had been referred to the loss adjuster. After a site visit with her on 22 February 2008, the loss adjuster sent her a written acknowledgement on 25 February 2008.

3.34 On 26 June 2008, the loss adjuster rejected her claim. It considered the incident on 4 January 2008 to have happened under circumstances not foreseeable by HD since the wooden plank was not there when security guards patrolled the location less than an hour earlier (exact time not known).

3.35 The complainant alleged, however, that when she tripped over, a tenant was moving some objects at the scene with help from a security guard. Had the estate management staff properly monitored the movement of the objects, the wooden plank would not have been left unattended and led to her injury. In July, she asked HD to provide the photographs that it had taken of the scene after the incident to prepare for her appeal against the loss adjuster's rejection of her claim. On the loss adjuster's advice, HD rejected her request. In August, she complained to this Office.

3.36 In October 2008, the loss adjuster upheld its decision. In December 2008, upon this Office's request, HD provided the complainant with the photographs requested. In concluding this case in February 2009, this Office criticised HD's indiscriminate adoption of the loss adjuster's advice and called on it to provide information to complainants as far as possible.

3.37 Deficiencies noted:

- *HD had failed to issue any substantive or interim reply to the complainant in accordance with the procedures (**paras. 2.2 – 2.3**).*

- *HD had rejected the complainant's reasonable request for photographs of the scene of the incident (**para. 3.35**).*

4

OBSERVATIONS AND OPINIONS

4.1 About a quarter of Hong Kong's population live in public rental housing estates. Tasked to manage and maintain accommodation for such a large number of people, HD professes a commitment to effective complaints handling and to continuous improvement of its service to meet the tenants' expectations.

4.2 On the face of it, HD recognises that "public complaints provide feedback on the customers' expectation of the delivery of services by the Department, and will facilitate the identification of possible systemic weaknesses and areas for improvement in our strive for customer satisfaction". This is well set out in its Departmental General Circular (**para. 2.1**).

4.3 In practice, however, some cases do not get proper processing by HD simply because they include a claim for damages. All such claims seem to trigger automatic referral to the insurer's loss adjuster, to the total exclusion of any further attention from HD.

HANDLING OF COMPLAINTS

4.4 According to the procedures (**para. 2.6**), where a complaint involves a claim, while referring the claim to the loss adjuster, HD should process the complaint itself in the usual way, from acknowledgement to final reply (**paras. 2.2 – 2.3**). However, in fact, the procedures have not always been followed.

Acknowledging Complaints and Updating Complainants

4.5 HD had not acknowledged receipt of the complaints in **Cases 3 (para. 3.21)**, **4 (para. 3.28)** and **5 (para. 3.32)**. Interim replies were required to inform complainants of progress in all six cases, but HD had only complied in **Case 1 (para. 3.6)**.

Replying to Complainants

4.6 This Office is impressed with the thoroughness and clarity of HD's guidelines on replying to complaints (**para. 2.3**). If followed, HD's replies would cover practically all that complainants need to know. However, HD had issued no such comprehensive reply in the cases studied.

4.7 Even in **Case 1**, where HD did reply, it failed to address any of the complainant's concerns over safety and estate management issues such as the level of competence of workmen and lack of follow-up action by HD staff (**para. 3.10**). This was despite the fact that HD headquarters had given clear instructions on how to handle a complaint (**para. 3.6**).

Follow-up/Rectification of Problems

4.8 In all six cases, HD had failed to identify problems for follow-up action or rectification in accordance with the procedures (**para. 2.4**).

4.9 It was inappropriate and inadequate of HD to have overlooked, or ignored, its own procedures for investigating a case itself and to rely on the loss adjuster's investigation. Appointed by the insurer, the loss adjuster naturally investigates and adjusts claims only with reference to the insurance policy. Other issues such as the need for service or management improvement must be addressed by HD itself outside the scope of the insurance policy.

4.10 In **Case 3**, HD took no initiative to reflect upon its own lack of regular inspection of unoccupied flats. It finally took the complainant to raise the issue with the loss adjuster and the latter to remind HD of its liability (**para. 3.21**).

4.11 If HD is to uphold the spirit of its Departmental General Circular (**para. 4.2**), i.e. to identify weaknesses and areas for improvement through public complaints, it should conduct its own parallel investigations to get to the root cause(s) of complaints.

HANDLING OF CLAIMS

By Loss Adjuster

4.12 The insurance (**para. 2.6**) is meant to mitigate HD's financial burden in case it has to pay compensation. It does not absolve HD of its responsibilities as it has ultimate responsibility for the proper handling of claims. In this light, even with claims referred to the loss adjuster (**para. 2.6**), HD has a duty to monitor progress and require the loss adjuster to follow the prescribed procedures (**para. 2.8 and Annex II**): e.g. for timely acknowledgement (**para. 2.8(b)**), for regular update to the claimant (**para. 2.8(c)**) and for prompt reply to the claimant on completing investigation (**para. 2.8(d)**).

4.13 However, in four of the cases studied (**Cases 1 – 4**), the loss adjuster had failed to issue an acknowledgement within five working days. In some cases, the loss adjuster had also failed to advise the claimants on progress (**Cases 2 and 4**).

HD Monitoring

4.14 Evidently, HD had not monitored those cases properly. The monthly and quarterly reviews (**para. 2.11**) were ineffective. In **Case 2**, the loss adjuster had not followed up its initial contact with the claimant for eight months (**para. 3.11**). In **Case 5**, the loss adjuster did not commence investigation until six months after receiving the claim (**para. 3.30**). In both cases, when chased by the claimants for progress, the HD officers concerned simply reminded the loss adjuster to follow up without taking issue with its non-compliance with service standards.

By HD Contractors

4.15 Claims handled by contractors are not subject to any service standards prescribed by HD (**para. 2.9**). Monitoring is loose and consequently, records are incomplete, with some cases having no records at all (**para. 2.12**).

4.16 It is HD's established practice to urge for conciliatory settlement by contractors with payment to claimants (**para. 2.12**). This enthusiastic approach contrasts markedly with HD's strict detachment from the loss adjusting process of claims against HD itself by its insurer's loss adjuster (**paras. 2.6 – 2.7**). This Office is not against HD being involved in handling of claims. However, it is inconsistent of HD not to give any attention to claims against itself while helping claimants enthusiastically in claims against its contractors. HD should maintain a similar approach in monitoring claims both against itself and against contractors.

Keeping of Records

4.17 As for keeping records of cases, whereas HD is able to capture full records of cases handled by the loss adjuster of its insurer, its documentation of cases handled by its contractors leaves much to be desired (**para. 2.12**). The current programme to centralise the handling of claims against contractors (**para. 2.10**) should bring improvement in the long run. Meanwhile, however, HD must ensure that proper records are kept.

Replying to Claimants

4.18 In the cases studied, the replies to claimants issued by the loss adjusters of HD's and contractors' insurers differed in format and degree of details. This is unsatisfactory as it could confuse the claimants who tend to be lay persons unaccustomed to technical documents. Hopefully, the new insurance arrangement for contractors (**para. 2.10**) would facilitate a more unified approach in future.

ASSISTANCE TO CLAIMANTS

4.19 HD has been leaving claims to the loss adjuster of its insurer, sometimes to the extent of denying information or other forms of assistance due to claimants in need. **Case 6 (para. 3.37)** illustrates how this approach tends to put claimants in an adversarial position and HD easily loses sight of its social responsibility as a public service organisation. The claimant had a genuine need for the photographs taken of the scene of the incident, but HD rejected her reasonable request, purely on the loss adjuster's advice. This inclination for self-protection is contrary to public expectations and risks aggravating claimants' grievance, to the detriment of HD's public image.

4.20 HD should, therefore, not only supply all relevant information to enable the loss adjuster to arrive at a well-grounded conclusion, but also accommodate claimants' requests for information and assistance as far as possible. Moreover, it should carefully study claims itself and judiciously assess the loss adjuster's advice, which is inevitably restricted to HD's liability covered by the insurance policy (**para. 2.6**).

5

RECOMMENDATIONS

5.1 For complaints involving claims, it is HD practice to refer the claims to its insurer's loss adjuster. Nevertheless, HD has ultimate responsibility for the proper handling of such cases. Our study, however, highlights two core issues requiring rectification. First, the way HD handles complaints involving claims often overlooks the need to examine the root causes of problems. Secondly, HD's monitoring of claims under processing does not ensure the loss adjuster performing to specified standards and comprehensive tracking of cases against contractors.

5.2 In this connection, The Ombudsman recommends that HD:

Processing of Complaints

(a) remind staff regularly to follow its prescribed procedures for handling complaints that include claims for damages (**para. 4.4**);

(b) remind staff of the need for parallel investigation of complaints other than the claims involved to get to the root cause(s) and to improve as appropriate (**paras. 4.4 – 4.11**);

(c) step up monitoring of complaints handling by frontline staff (**paras. 4.4 – 4.9**);

Handling of Claims by Loss Adjuster

(d) provide clear guidelines to frontline staff for monitoring claims handling by the loss adjuster *vis-à-vis* the prescribed service

standards (**para. 4.12 – 4.14**);

(e) review and step up monitoring of claims handling by the loss adjuster (**para. 4.14**);

Handling of Claims by Contractors

(f) devise a consistent approach for monitoring claims handling by the loss adjuster and contractors (**para. 4.16**);

(g) provide clear guidelines and training to ensure consistent monitoring by HD frontline staff of claims handling by these parties (**para. 4.16**);

Keeping of Records

(h) require contractors not yet covered by the centralised arrangement (**para. 2.10**) to furnish progress reports on the claims they handle (**para. 4.17**);

(i) require staff to keep records of cases against contractors, providing guidelines on the format of filing (**para. 4.17**);

Assistance to Claimants

(j) supply all relevant information to enable the loss adjuster to arrive at well-reasoned conclusions on claims (**para. 4.20**); and

(k) provide information or other forms of assistance to claimants in need (**paras. 4.19 – 4.20**).

6

FINAL REMARKS

HD COMMENTS

6.1 HD admits to deficiencies in its handling of complaints involving property damage or injury claims, with room for improvement in monitoring and handling of claims by its frontline staff and service contractors. It agrees that the management of improvement and preventive action following a complaint should be strengthened and more structured and that a better record system should be set up.

6.2 It accepts all our recommendations and has already set in train some of the measures, including:

- reinforcing staff awareness of the complaints handling procedures by re-circulating regularly relevant guidelines and organising training seminars;

- requiring proper filing of cases by frontline offices and setting up a management database for such cases by the end of 2009;

- requiring regional management to review complaints and share information and stepping up monitoring by the Public Liability Insurance Claims Review Sub-group (**para. 2.11**);

- enhancing research into design and maintenance improvements and improving operation procedures and work practices to prevent recurrence of accidents and complaints;

- stepping up monitoring of the loss adjuster by HD's insurance adviser; and

- requiring all contractors not covered by the umbrella insurance policy to submit periodic reports on progress and settlement of claims, and requiring staff to also submit periodic reports on such matters.

CONCLUDING REMARKS FROM THE OMBUDSMAN

6.3 The Ombudsman welcomes HD's positive and proactive response to our recommendations and appreciates its prompt action to implement some of them. He is grateful for the cooperation rendered throughout the investigation by the Director of Housing and his colleagues.

6.4 We will monitor the implementation of our recommendations.

Office of The Ombudsman
Ref.: OMB/DI/178
August 2009

ANNEXES

Annex I
(para. 2.1)

Procedures in Handling Complaints from Members of the Public Direct or through Other Government Bureaux and Departments or Agencies

Performance Pledges

On receipt of the complaints for members of the public direct or through other Government bureaux and departments or agencies, including but not limited to, the Chief Executive, Chief Secretary of Administration, Legislative Council, District Councils, statutory bodies (such as the Equal Opportunities Commission, Office of the Privacy Commissioner for Personal Data, and the Consumer Council, etc), the Complaint Officer should reply to complainants according to the procedures and timeframes below—

(a) send an interim reply or acknowledge receipt of the complaint **within ten days** of receipt (by the first contact point of Housing Department);

(b) collect information and conduct investigation into the complaint;

(c) send a substantive reply **within twenty-one days** of receipt of the complaint;

(d) if a substantive reply cannot be issued within the above timeframe, inform the complainant on or before the substantive reply due date in writing and **on a monthly basis**—

   (i) of the progress being made; and

   (ii) when a substantive reply will be issued and the reason for the delay, or

(e) for issues with far-reaching implications that may require a review of policies, procedures, designs and standards, etc, if a substantive reply cannot be provided immediately or even in the foreseeable future, explain in the reply the difficulties encountered and suggest a feasible date to bring up or review the issue or, at the Complaint Officer's discretion, round up the correspondence by assuring the complainant that appropriate follow-up action will be proceeded as far as practicable.

2. Subject to its operational requirements, individual division may adjust the pledge to a shorter timeframe within the departmental guidelines if considered appropriate.

Referrals from Government bureaux and departments

3. Public complaints referred from Government bureaux and departments falling outside the purview of the Department should be immediately referred to the appropriate Government departments for action. The original referring bureaux or departments should be informed and advised of the diversion accordingly. If duplicate complaints are received, the Complaint Officer should coordinate with the Government departments concerned to consider whether a consolidated reply or a reply by the coordinating departments should be issued. The complainants should be notified of the arrangements as soon as possible.

Written Complaints

Issuing of Interim Replies

4. The first interim reply, which is serving as an acknowledgement of receipt, is usually issued by the Complaint Officer **within ten days** of receipt by the first contact point of the Department. However, for the avoidance of lapse of time in the dispatching process, co-ordinating parties such as C&ES of Homantin HAHQs may issue the first interim reply when considered necessary. Upon receiving a complaint, the Complaint Officer will have to make sure an interim reply has been served.

5. If a substantive reply cannot be ready according to the set timeframe listed in paragraph 1 (a) and (c), the Complaint Officer is responsible for taking follow up action in paragraph 1 (d) until a substantive reply is offered or in paragraph 1 (e) as appropriate. Interim and substantive replies to cases received by STH's Office or referred by C&ES should be copied to C&ES for progress monitoring and analysis. Unless otherwise specified, interim and substantive replies of complaint cases received directly by Complaint Officers and outstation offices are not required to be copied to C&ES.

Replies to Complainants

6. In their response to public complaints, Complaint Officers should adopt a

customer-oriented approach with a view to solving the problems. They should be polite and composed in dealing with members of the public. Replies to the complainants should be in the same language which the complaints use. As a matter of good customer practice, replies should be conveyed in simple and easily understood terms, technical and professional jargons which are not commonly used by the general public should be avoided as far as possible.

7. Samples of the opening paragraph and content of standard acknowledgement, interim or substantive replies are suggested in **Annex IV** for reference.

8. Depending on individual circumstances and merits of a complaint, replies to the complainants should include the following content when appropriate—

(a) circumstances giving rise to the complaint;

(b) the investigation of complaint and the outcome as measured against established policies, operational guidelines, and approved procedures;

(c) reasons for the decision;

(d) action taken or to be taken;

(e) improvement measures planned with timeframe for implementation;

(f) suggestions proposed for consideration;

(g) apologies in deserving cases;

(h) name and telephone number of contact officer if further clarification is necessary; and

(i) review channels if the complainant is not satisfied with the reply (paragraphs 21 to 25 hereof are relevant).

Verbal Complaints

9. Verbal complaints should be accorded equal weight as written complaints. Officers handling verbal complaints should follow the same procedures and performance pledges as required for written complaints. Verbal complaints that lead to the issue of a written reply should be recorded in the Complaints and Requests Management System.

10. Direct dialogues between the Complaint Officers or their staff and the complainants are conducive to removing misunderstanding and resolving conflicts that are often the cause of complaints.

11. In handling verbal complaints, Complaint Officers and their staff must apply their own discretion sensibly and reasonably. Some practical guidelines are provided below for reference. For instance, they should—

(a) reject a request for information that is (i) unrelated to the complaint; (ii) classified or premature to be released for general public consumption; and (iii) not in compliance with the Code on Access to Information;

(b) refuse to provide any personal secretarial service (e.g take dictation over the telephone, etc);

(c) not incur any public resources in terms of photocopying/distributing complainant's personal correspondence. All complainants should be responsible for the expense in making their complaints; and

(d) be under no obligation to continue any tele-conversation with a complainant if he continues to use foul, abusive or harassing language, after proper advance warning.

Anonymous Complaints

12. Anonymous complaints should be treated as a feedback for review and as appropriate, properly investigated and considered. Since a direct reply to the complainant may not be possible, if an issue of public concern is involved in the anonymous complaint, the Complaint Officer should report to a higher level for appropriate action. The Complaint Officer should also consider the need to publicize the progress of investigation and the outcome of the complaint case through appropriate communication channels.

"One-person one-letter" Complaints

13. In handling submissions from members of the public, irrespective of the number of letters received, direct and individual replies should be given as far as possible. If a representative(s) of the "one-person one-letter" exercise can be identified, a direct reply to the representative(s) should be sufficient.

14. In cases where issues of common interest are concerned, direct replies to individuals or repeated enquiries from concerned groups can be supplemented by notices put up at appropriate places for public information, if considered necessary.

Complaint Against Staff

15. Whenever feasible, for complaints against individual staff, staff being complained should not be assigned as the Complaint Officer of the case or reply direct to the complainant. The Complaint Officer who is delegated with the investigatory functions and assigned for signing the reply should be at least one rank higher than the officer being complained and not lower than professional rank in his Division/Section.

16. All complaints will be dealt with in confidence and the identity of the complainant should normally be kept confidential. However, it is understood that sometimes a fair and impartial investigation cannot be pursued without the complainant's identity being divulged. Complainants' identity will not be revealed, as far as possible, to anyone other than those involved in investigating the complaint.

17. Complaint Officers are reminded that it is of utmost importance to be fair and impartial in investigating this type of sensitive cases. Regardless of whether these complaints are found to be substantiated or unsubstantiated, Complaint Officers should remind those officers being complained, especially front-line staff, not to prejudice against any complainant identified.

Security Grading of Complaints

18. Complaints from members of the public against staff should be graded "Restricted (Staff)". Other public complaints should be given a security grading commensurate with their seriousness and sensitivity.

Complaints Register

19. Complaint Officers should enter the particulars, progress and correspondences of each complaint case into the **Complaints and Requests Management System** for record.

20. For replies to the Legislative Council, reference should be made to Secretariat Confidential Circular No.2/96, a copy of which is kept in the Confidential Registry.

Review Procedures

21. Complaint Officers shall use their best endeavours to provide quality service to the community and to settle complaints by conciliation if they arise from misunderstanding or miscommunication. If the complainant is not satisfied with the content of the reply and the action taken or to taken, the complaint should be reviewed by an officer one rank above the officer who signed the previous reply and the written reply should be signed by him.

22. If the complainant is still not satisfied with the reply by the senior professional officer, the complaint should be reviewed by an officer at directorate rank or at least one rank above the officer who signed the second written reply.

Annex II
(para. 2.8)

Claim Service Standard for Third Party Liability Claims

Item	*Nature of Service*	*Service Standard*
1	Insurer and its appointed Loss Adjuster have to nominate a working team to handle all reported incidents for the Hong Kong Housing Authority ("HKHA")/Housing Department ("HD").	Insurer and Loss Adjuster should each assign no less than 2 members to form a working team.
2	Loss Adjuster has to provide a Fax Hotline for claims notification from HKHA.	The Fax Hotline must be a available for 7 days x 24 hours per week.
3	Loss Adjuster has to handle all daily enquiries from various offices of HD on potential claims.	Loss Adjuster must respond within 2 working days to verbal enquiries, and within 3 working days to written enquiries upon receipt of such enquiries.
4	Loss Adjuster has to acknowledge receipt of and provide technical scanning on all incident reports submitted by HD offices.	Loss Adjuster must acknowledge receipt of all claim notifications in writing to HD offices within 2 working days (upon receipt of each notification).
5	Loss Adjuster is responsible for maintenance of claim files for those incidents with potential Third Party ("TP") claims or presented TP claims.	Loss Adjuster is responsible for creating claim record in an agreed excel database format within 3 working days (upon receipt of each claim notification).
6	Loss Adjuster has to issue acknowledgement letters and periodic follow-up letters to TP claimants. All correspondence must be effected in the same language conducted by the TP etc. For example, Loss Adjuster/Insurer to prepare letters/correspondence in Chinese with different internal and external parties concerned including the claimants.	Loss Adjuster has to provide acknowledgement letter to TP claimants within 5 working days (from the date of receipt of their written claims). In addition, follow-up letter has to be provided to TP claimants on a quarterly basis.
7	Loss Adjuster has to make enquiry and/or investigation either through telephone, correspondence and/or site inspection for all TP claims.	Loss Adjuster has to: (i) make initial enquiry and provide response to any feedback within 5 working days (respectively upon receipt of such claim

Item	*Nature of Service*	*Service Standard*
		notification of feedback from relevant parties), and (ii) after receipt of information from HD or claimants, Loss Adjuster needs to respond within 15 working days from receipt of information to advise relevant parties whether any additional information are required and the reason, and (iii) establish initial claim reserve figures within 5 working days (upon receipt of such claim notification), and (iv) after all the requested information has been provided, Loss Adjuster/Insurer should decide and advise HD and claimants in writing within 30 working days (from the date of receipt of all information) whether legal liability is attached and if so, the amount of compensation. If Loss Adjuster/Insurer consider that liability is not attached, then they have to give reason in writing why they have this conclusion.
8	Insurer and/or Loss Adjuster have to recommend and advise HKHA of the amount of reserve for outstanding claims subject to periodic revision.	The recommendation on loss reserve has to be provided preferably on daily basis (but not exceeding quarterly basis as per HKHA's prescribed guidelines).
9	Insurer and/or Loss Adjuster have to maintain and update computer records for all reported incidents under the specified system in accordance with the requirements designated by HKHA.	Claim data must be created/updated within 3 working days for any progress or development.
10	Insurer and/or Loss Adjuster have to submit	Claims experience reports are required to be

Item	Nature of Service	Service Standard
	periodic claims experience report.	produced on: 1. monthly basis for those outstanding claims and the related claim status and financial transaction movements within the month including the cases falling within the policy deductible. 2. quarterly basis comprising all outstanding claims, settled and closed claims as well as the claims closed without payment (including cases falling within the policy deductible).
11	Insurer and Loss Adjuster have to establish specific claims review system in line with HKHA's practice and review any outstanding claim pending without development over 3 months.	Loss Adjuster will provide written advice of claim status to TP once every 3 months if a case has been pending without development (with copy to HD office).
12	Insurer and/or Loss Adjuster have to negotiate, assess, decline or close all TP claims for and on behalf of HKHA and keep all parties informed of the progress and development.	Loss Adjuster has to issue a Denial Letter to TP within 5 working days upon completion of investigation.
13	Loss Adjuster has to make settlement offer to TP in accordance with HKHA's prescribed guideline and approval.	Insurer has to confirm their agreement to make settlement offer to TP within 5 working days upon receipt of Adjuster's report or written recommendation. Loss Adjuster has to make settlement offer to TP within 5 working days upon receipt of HKHA (for claims below Deductible) or insurer's approval (for claims in excess of Dedcutible).
14	Loss Adjuster has to handle all necessary procedures regarding any settlement of TP claims.	Claim cheque must be sent out by Loss Adjuster within 10 working days after receipt of Discharge Form duly signed by the TP claimant.

Item	*Nature of Service*	*Service Standard*
15	Insurer and Loss Adjuster shall attend regular service review meetings (currently on a quarterly basis) or any *ad hoc* meeting.	Upon request.
16	Insurer to handle legal actions and Loss Adjuster to make arrangement and provide all necessary assistance for the taking over by the Insurer of legal actions against HKHA.	Subject to the circumstances, Insurer is required to confirm their appointment of legal representative to take over the conduct of defence immediately (if immediate action is required on the proceedings) and in any event no later than 7 working days upon HKHA's receipt of any writ or writ of summons or other legal proceedings served on/instituted against HKHA.
17	Insurer and/or Loss Adjuster shall keep HKHA informed of the progress whenever legal proceedings are involved.	When legal action against the HKHA is taken over by the Insurer and solicitors are appointed by the Insurer to represent HKHA in the proceedings, the appointed solicitors shall keep the Legal Service Sub-division ("LSS") of HKHA and her Insurance Advisor informed of the progress of the proceedings and mutually agree with LSS as appropriate on the defence and statements etc. to be filed on behalf of the HKHA; and copy to LSS the relevant documents in the proceedings.
18	Loss Adjuster has to secure HKHA's legal right and interest under any incident reported and proceed recovery action against any laible TP for and on behalf of HKHA.	Loss Adjuster has to provide quarterly update on the progress of any recovery action.
19	Loss Adjuster has to provide service of presentation or specific training to HKHA's staff.	Upon request.